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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,547	07/25/2003	Yasuyuki Okuda	0445-0340P	1174

2292 7590 09/26/2006

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EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/626,547

Applicant(s)

OKUDA ET AL.

Examiner

Laura C. Hill

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 6-11, 13, 15 and 16.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Response to After Final Remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Response to After Final Arguments

Applicant's arguments filed 14 September 2006 have been fully considered but they are not persuasive.

The evidence (e.g. Tables 1 and 2) submitted after the final rejection mailed 14 June 2006 **will** be entered because Applicant did show good and sufficient reasons why the evidence was not earlier presented as per 37 CFR 1.116e (see Remarks page 6). Specifically, Examiner believes that Table 1 is in direct response to comments made in a final rejection with regards to the tensile ratios of the present invention versus the Comparative examples of Okuda and in response to other comments. However, this evidence does not show the present invention has achieved unexpected results as discussed in the final Office action and additionally as per the reasons discussed below.

In attempting to show the comparative between the closest prior art (Okuda WO/0053140) and the claimed invention in "Table 1" submitted 14 September 2006 and the "Comparative Data" submitted 4 April 2006, Examiner would like to point out that Okuda does not disclose in the specification the extension ratio under a given load, the type of elastic member used, the number of elastics, or the gather pitch. Okuda is silent as to what type of elastic is used in the standing gathers and there are a wide range of elastic material types, sizes and number of strands, filaments, etc which are all variables that can affect how quickly or slowly the standing elastic gathers stretch and contract before, during and after application of an absorbent article on a wearer. It is unclear to the Examiner how Applicant's have chosen "Lycra 780 dtex" and "Lycra 940 dtex" with 4 and 5 elastic members in Table 1 dated 14 September as a representative

of the type of elastic used by Okuda. Furthermore, it is unclear how the "gather pitch" of Table 1 is related to how the distance between standing gathers, fixing extension ratio and rate of increase of tensile load purportedly contribute to standing leg gathers that enable the caregiver to put the article on in a sitting or standing position. Moreover, even if there is a clear nexus between "gather pitch" and Applicant's invention, this variable is not positively recited in the claims or discussed in the specification.

With respect to Table 2, Okuda does not disclose the load over a specific gather length and it appears as these values in graphs A,B,C that supposedly represent Okuda have been arbitrarily chosen. Moreover, there is no apparent nexus between the combination of ratio widths, fixing extension ratio and rate of increase of tensile load since there is no evidence that these variables rather than unclaimed variables such as type of elastic material, number of elastics, etc. directly influence the ability of the standing gathers to contract without leakage in order to be placed on a wearer while standing. Thus, the evidence submitted by Applicant after (and before) the final rejection is deficient with respect to establishing unexpected results and novelty and is therefore insufficient to overcome the rejection as previously discussed with respect to Okuda.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
Art Unit 3761

LCH

A handwritten signature in black ink, appearing to be 'LCH', located below the printed name 'LCH'.